

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: :
PRETRIAL DIVERSION : **STANDING ORDER #93-7**
:
:

ORDER OF COURT

The Court hereby adopts the attached policy regarding the Pretrial Diversion Program.

_____/s_____
SYLVIA H. RAMBO, Chief U.S. District Judge

_____/s_____
William W. Caldwell, U.S. District Judge

_____/s_____
Edwin M. Kosik, U.S. District Judge

_____/s_____
James F. McClure, U.S. District Judge

/s/

William J. Nealon, U.S. District Judge

/s/

Malcolm Muir, U.S. District Judge

/s/

Richard P. Conaboy, U.S. District Judge

Date: 11/23/93

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PRETRIAL DIVERSION OPERATIONS AGREEMENT

The United States Attorney's Office and the Probation Office shall operate the Pretrial Diversion Program in accordance with the terms adopted by the U.S. Court for the Middle District of Pennsylvania.

/s/

David M. Barasch
United States Attorney

/s/

Joseph P. Donohue
Chief Probation Officer

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PRETRIAL DIVERSION PROGRAM

I. Legal Authority

Pursuant to 18 U.S.C. §3154(10), the probation office shall to the extent provided for in an agreement between the Chief Probation Officer and the U.S.. Attorney, collect, verify and prepare reports for the U.S. Attorney's Office pertaining to the pretrial diversion of any person who is or may be charged with an offense and perform such other duties as may be required under any such agreement.

II. Definition

Pretrial diversion is an alternative to prosecution which seeks to divert certain candidates from traditional criminal justice processing into a program of community supervision administered by the probation office. The Diversion Program may begin prior or subsequent to the formal filing of charges. In either case, prosecution is suspended. If charges have been filed, they are dismissed following successful completion of the program. A candidate's participation in the Diversion Program shall be voluntary.

III. Objectives

The objectives of the Pretrial Diversion Program are to prevent future criminal activity by certain candidates against whom prosecutable cases exist; to save prosecutive and judicial resources; and to provide, where appropriate, a vehicle for restitution to communities and victims of crime.

IV. Eligibility Criteria

An individual may be diverted when a prosecutable case exists and if the individual meets established criteria -- see Exhibit A.

V. Legal Representation

Candidates for pretrial diversion shall be represented by legal counsel. If an indigent individual is being considered for diversion prior to the filing of formal charges and is without counsel, the U.S. Attorney's Office shall refer the individual to the Federal Public Defender's Office or schedule an appearance before a U.S. Magistrate Judge for consideration of eligibility for the appointment of counsel.

VI. Referrals

The U.S. Attorney's Office shall be responsible for selecting persons to be considered for the Pretrial Diversion Program. If the Probation Office identifies a potential candidate, the Chief Probation Officer may request the U.S. Attorney to consider the person for the Pretrial Diversion Program.

When the U.S. Attorney's Office identifies a case for referral to the Pretrial Diversion Program, the Assistant U.S. Attorney shall notify the candidate and defense counsel by letter (Exhibit B) and shall provide them with the Application for Pretrial Diversion Program (Exhibit C). Defense counsel shall discuss the Program with the candidate and review the waiver of rights to a speedy trial and the presentment to a grand jury within the statute of limitations. If the candidate wishes to participate, defense counsel shall notify the U.S. Attorney's Office and return the completed application. The Assistant U.S. Attorney shall then forward to the Chief Probation Officer a referral letter with a copy to the supervising judicial officer (Exhibit D), an investigative report and a copy of the completed application. Within three days, the Chief Probation Officer or his designee shall acknowledge the referral and identify the probation officer assigned to conduct the investigation (Exhibit E). No pretrial diversion investigation shall be initiated until a formal request is received from the U.S. Attorney's Office.

VII. Pretrial Diversion Report

The probation office shall conduct an investigation to assess the candidate's suitability for participation in the Pretrial Diversion Program and shall prepare a written report within 30 days after receipt of the U.S. Attorney's referral letter. The report shall include, but shall not be limited to, the following, Details of Offense, Personal History, Prior Criminal Record, Assessment and Recommendation. Upon completion of the report, the probation officer shall provide a brief written summary of the case to a judge on the Probation Committee acting on behalf of the Court. If the Court does not concur with the recommendation of the probation officer, the judge shall communicate with the probation officer within five days of receipt of the written summary. If the Court interposes no objection, the probation officer shall provide the report and recommendation to the U.S. Attorney's Office and defense counsel. Defense counsel shall return the report to the probation office when the candidate is accepted or rejected for the Pretrial Diversion Program. A person's admission to the Pretrial Diversion Program shall be subject to the concurrence of the U.S. Attorney and the Chief Probation Officer.

VIII. Pretrial Diversion Agreement

When a person is approved for admission to the Pretrial Diversion Program, the Assistant U.S. Attorney shall prepare a Pretrial Diversion Agreement within seven days of receiving the report. The agreement shall contain the terms and conditions of the Pretrial Diversion Program. The length of supervision is not to exceed 18 months. Persons admitted to the Pretrial Diversion Program shall abide by the standard conditions adopted by the Court and any special conditions included in the Pretrial Diversion Agreement (Exhibit F).

The Assistant U.S. Attorney shall schedule a conference with the candidate, defense counsel and the

probation officer. At the conference, the terms and conditions of the Pretrial Diversion Program shall be reviewed and the Agreement executed by the parties. Supervision commences upon execution of the Agreement. If charges have been filed, the U.S. Attorney's Office shall, after execution of the Agreement, submit to the supervising judicial officer an order dismissing the charges without prejudice (Exhibit G).

If the candidate is not admitted to the Pretrial Diversion Program, the Assistant U.S. Attorney shall so advise the probation office and defense counsel. A candidate not admitted to the Pretrial Diversion Program is subject to prosecution.

IX. Supervision

The Probation Office shall supervise the person under the Pretrial Diversion Program in accordance with the terms and conditions of the Agreement.

A) Confidentiality

The Pretrial Diversion Agreement shall not be a public document and the fact that a person is on pretrial diversion is confidential and shall not be disclosed.

B) Third Party Risk

A determination of risk shall be made in each case. Factors to consider in making this evaluation are the facts of the case, the person's conduct and prior criminal record. Consideration shall be given to the person's current employment and other circumstances which might present the person with an opportunity or temptation to engage in criminal or anti-social behavior related to the person's criminal background.

At the onset of supervision and, thereafter, if the circumstances of the divertee change, the probation officer shall review the case to determine whether a reasonably foreseeable risk to a third party exists. Reasonably foreseeable risk means that the circumstances of the relationship between the divertee and the third party (e.g., employer and employee) suggest that the person may engage in a criminal or anti-social manner similar or related to past conduct. Matters related to third party risk shall be reported to the U.S. Attorney's Office. Resolution of such issues shall be subject to the concurrence of the U.S. Attorney and Chief Probation Officer. Unresolved issues shall be referred to a judge on the Probation Committee.

C) Flash Notices

When a candidate is accepted into the Pretrial Diversion Program, the probation office shall send a "Flash Notice" (FBI Form 1-1 2--Exhibit H) to the Director of the FBI in Washington, DC. This will facilitate notification of any new arrest involving the divertee. When a divertee has successfully completed the Pretrial Diversion Program, the probation office shall send a "Final Disposition Report"

(Form R-84--Exhibit 1) indicating the final disposition and date to the Director of the FBI in Washington, DC. For the period of the diversion and for three years after the successful completion of the program, the Identification Division of the FBI shall retain the pretrial diversion information and shall disseminate it to all authorized requesters. After the three year period, the fingerprint cards shall be expunged from the Identification Division's file and shall be destroyed.

D) Early Discharge

A divertee who has fulfilled the terms and conditions of the Pretrial Diversion Agreement may be granted an early discharge from the Pretrial Diversion Program. Termination prior to the expiration date shall be subject to the concurrence of the U.S. Attorney and Chief Probation Officer.

X. Violations

The probation office shall immediately notify the Assistant U.S. Attorney assigned to the case of any apparent violation of the conditions and terms of the Pretrial Diversion Agreement. The U.S. Attorney's Office and the probation office shall confer regarding alleged violations. The U.S. Attorney with the concurrence of the Chief Probation Officer may terminate a divertee from the Pretrial Diversion Program or may modify the conditions of the Pretrial Diversion Agreement. If the U.S. Attorney and Chief Probation Officer do not concur regarding violation issues, the matter shall be referred to a judge on the Probation Committee for resolution. The Assistant U.S. Attorney shall notify defense counsel and the divertee of any modification of the terms or termination of the Pretrial Diversion Agreement.

XI. Termination

Upon satisfactory completion of the Pretrial Diversion Program by the divertee, the probation office shall promptly provide written certification to the Assistant U.S. Attorney (Exhibits J-1 and J-2). Upon receipt of that notification in cases where charges have previously been filed, the Assistant U.S. Attorney shall promptly prepare an order for the supervising judicial officer dismissing the charges with prejudice (Exhibit K) and shall forward a copy of the Order of Dismissal to the divertee, defense counsel and the probation office. If no formal charges are filed, the Assistant U.S. Attorney shall communicate to the divertee, defense counsel and the probation office that no charges shall be filed. The probation office shall file an FBI Disposition Form R-84, so that the record indicates successful completion.

ELIGIBILITY CRITERIA

The U.S. Attorney may divert any individual against whom a prosecutable case exists and who is not:

1. Accused of an offense which, under existing Department guidelines, should be diverted to the state for prosecution;

- 2. A person with two or more prior felony convictions;
- 3. An addict;
- 4. A public official or former public official accused of an offense arising out of an alleged violation of a public trust; or
- 5. Accused of an offense related to national security of foreign affairs.

Cases which meet the above criteria but are violations of the statutes listed below require prior approval of the Criminal Division of the U.S. Department of Justice.

STATUTES

Narcotics and Dangerous Drugs Section

21 U.S.C. §§848, 849

Organized Crime and Racketeering Section

12 U.S.C. §25a	18 U.S.C. §1301	18 U.S.C. §1953
12 U.S.C. §339	18 U.S.C. §§1302 to 1306	18 U.S.C. §1955
12 U.S.C. §1730c	18 U.S.C. §1511	18 U.S.C. §§1961 to 1968
12 U.S.C. §1829a	18 U.S.C. §§1801 to 1804	26 U.S.C. §§4401 to 4405
15 U.S.C. §§1171 to 1178	18 U.S.C. §1952	
18 U.S.C. §224		
18 U.S.C. §§891 to 894		

Exhibit A

Organized Crime and Racketeering Section (Management-Labor Unit)

15 U.S.C. §1281 (where labor matter involved)

18 U.S.C. §664		
18 U.S.C. §844(i) (where labor matter involved)		
18 U.S.C. §1027	29 U.S.C. §308	29 U.S.C. §1111
18 U.S.C. §1231	29 U.S.C. §439	29 U.S.C. §1131
18 U.S.C. §1951	29 U.S.C. §463	29 U.S.C. §1141
18 U.S.C. §1954	29 U.S.C. §501(c)	45 U.S.C. §152
29 U.S.C. §162	29 U.S.C. §§502 to 504	45 U.S.C. §152
29 U.S.C. §186	29 U.S.C. §522	45 U.S.C. §§181, 182
29 U.S.C. §§215, 216	29 U.S.C. §530	

General Litigation and Local Advice Section

18 U.S.C. §112	18 U.S.C. §1201(d)
18 U.S.C. §878	18 U.S.C. §§1501 to 1510
18 U.S.C. §970	18 U.S.C. §§1621 to 1623
18 U.S.C. §1116	18 U.S.C. §§2511, 2512
18 U.S.C. §1201(a)(4)	

Fraud Section

2 U.S.C. §§431 to 453	18 U.S.C. §1913
2 U.S.C. §§261 to 270	42 U.S.C. §1973(i)(c)
18 U.S.C. §§241, 242	
18 U.S.C. §§591 to 612	

TAX DIVISION

All Statutes

CIVIL RIGHTS DIVISION

All Statutes

Re: In the matter of: _____

Complaint No. _____

Dear

The United States Attorney for the Middle District of Pennsylvania has information that you have committed an offense against the United States in violation of Title _____ United States Code, Section(s) _____. Description: _____

After reviewing your case, we have made a preliminary determination that you may be an appropriate person to participate in the Pretrial Diversion Program. Pretrial diversion means that this office will not presently seek a conviction against you. Instead, if you qualify and are accepted, you will be placed in a pretrial diversion program under certain specified conditions described in a written agreement between you and the government for a term not to exceed eighteen months. If you satisfactorily fulfill the conditions and terms of the program, you shall not be prosecuted, or, if you have already been charged, the charges against you shall be dismissed. If you violate the conditions of the written agreement, you may be removed from the pretrial diversion program, in which case this office will resume prosecution.

Decision to seek acceptance into this program is one that must ultimately be made by you alone. Nevertheless, it is important that you immediately discuss this matter fully and completely with your attorney inasmuch as your participation in this program will constitute a waiver of certain rights afforded to you by the Constitution. Specifically, you must waive your right to a speedy trial and your right to have an indictment presented to a grand jury within the applicable statute of limitations. If you believe you are unable to afford an attorney, you may apply to the Federal Public Defender's Office to have counsel appointed to represent you.

If you desire to be further considered for the pretrial diversion program, please let us know at your earliest convenience.

Any information furnished in connection with your application for pretrial diversion will be confidential and will not be admissible on the issue of guilt in subsequent criminal proceedings.

In order to ensure that appropriate procedures can be initiated as soon as possible, please respond promptly.

Very truly yours,

United States Attorney

Assistant United States Attorney

Exhibit B

APPLICATION FOR PRE-TRIAL DIVERSION PROGRAM

All answers must be complete

Use X marks where appropriate

1. Name _____ Phone No. _____

Address _____

(Street)

(City)

(State)

(zip)

Length of Residence at Present Address _____

2. Age _____ 3. DOB _____ 4. Place of Birth _____

5. Sex _____ F _____ M 6. Social Security No. _____

7. Marital Status _____ Never Married _____ Married _____ Widow/Widower
_____ Separated _____ Divorced

8. No. of Dependents ____0 ____1 ____2 ____3 ____4 ____5 ____6 and over

9. Present Living Arrangements ____Alone ____w/Parent(s) ____w/Spouse
____w/Relatives ____w/Friend(s)

10. Education ____Less than 8th grade ____Less than 12th grade
____High School Graduate ____Other

11. Vocation Training Completed ____Yes ____No; Type _____

12. Military Service ____Yes ____No; Branch_____

Type of Discharge _____ Date_____

13. Nearest Contact (Person who would usually know your whereabouts)

Name _____ Phone (____) _____

Address_____

Relationship to Defendant _____

14. Defense Attorney:

Name _____ Phone (____) _____

Address_____

15. Present Employer _____ Phone (____) _____

Address _____

Date Employed _____ Occupation _____ Salary _____

16. Employment History (Begin with last previous place of employment)*

Name of Employer _____ Phone No. (____) _____

Address _____

Dates Employed: From _____ to _____ Occupation _____

Reason Left _____

Name of Employer _____ Phone No. (____) _____

Address _____

Dates Employed: From _____ to _____ Occupation _____

Reason Left _____

Name of Employer _____ Phone No. () _____

Address _____

Dates Employed: From _____ to _____ Occupation _____

Reason Left _____

Name of Employer _____ Phone No. () _____

Address _____

Dates Employed: From _____ to _____ Occupation _____

Reason Left _____

List employment for the past six years. If you need additional space, use blank sheet of paper.

17. Source of Income _____ Employment (self) _____ Employment (spouse)

_____ Unemployment Compensation (Amount \$ _____)

_____ Public Assistance (Amount \$ _____)

_____Parents _____Relatives _____Friends _____Other

18. Prior Offense Record _____None _____Juvenile _____Adult

I hereby apply for status as a participant in the pretrial diversion program. I authorize the probation office to conduct an investigation to determine my suitability for this program.

A false answer to any question in this application may be grounds for recommendation against placement into this program or removal after placement in the program, in which case, the U.S. Attorney may resume prosecution on the original charge.

Date_____

Applicant

Attorney for Applicant

Exhibit C

MEMORANDUM

TO: Joseph P. Donohue

Chief Probation Officer

FROM: _____

Assistant U.S. Attorney

SUBJECT: _____

PTD Referral

I am recommending pretrial diversion for _____who has been

reported to have violated Title _____,United States Code, Section _____.

I have enclosed the investigative report and Application for Pretrial Diversion. Upon completion of the investigation, please submit a report and recommendation to the U.S. Attorney's Office.

cc: Judicial Officer

Exhibit D

Date

MEMORANDUM

TO:_____

Assistant U.S. Attorney

FROM: Joseph P. Donohue

Chief Probation Officer

SUBJECT: John Doe

PTD Referral

This will acknowledge receipt of your correspondence.

Our office will conduct a Pretrial Diversion Investigation. The case has been assigned to Probation Officer

_____.

Exhibit E

MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

AGREEMENT FOR PRETRIAL DIVERSION

It appearing that you are reported to have committed an offense against the United States on or about _____ in violation of Title _____ United States Code, Section(s) _____ in that you did: _____.

Upon accepting responsibility for your behavior and by your signature on this Agreement, it appearing, after an investigation of the offense, and your background, that the interest of the United States, your own interest and the interest of justice will be served by the following procedure; therefore

On the authority of the Attorney General of the United States, by the United States Attorney for the Middle District of Pennsylvania, prosecution in this District for this offense shall be deferred for the period of _____ months from this date, provided you abide by the following conditions and requirements of this Agreement set out below.

Should you violate any condition of this Agreement, the United States Attorney, with the concurrence of the Chief Probation Officer, may terminate you from the Pretrial Diversion Program or may modify the conditions of the Pretrial Diversion Agreement. In no event shall the term of supervision exceed eighteen months. The United States Attorney may release you from supervision at any time. The United States Attorney may at any time within the period of your supervision, initiate prosecution for this offense should you violate any condition of this Agreement. In this case he/she will furnish you with notice specifying the condition of the Agreement which you have violated.

After successfully completing your diversion program and fulfilling all the terms and conditions of the Agreement, no prosecution for the offense set forth in this Agreement will be instituted in this District,

and the charges against you, if any, will be dismissed.

Neither this Agreement nor any other document filed with the United States Attorney as a result of your participation in the Pretrial Diversion Program shall be used against you in connection with any prosecution for the above-described offense.

General Conditions of Pretrial Diversion

- (1) You shall not commit a federal, state, or local crime during the term of supervision;
- (2) You shall not leave the judicial district or other specified geographic area without the permission of the probation officer;
- (3) You shall report to the probation officer, and shall submit a truthful and complete written report within the first five days of each month;
- (4) You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (5) You shall support your dependents and meet other family responsibilities;
- (6) You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (7) You shall notify the probation officer within seventy-two hours of any change in residence or employment;
- (8) You shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (9) You shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the Probation Officer;
- (10) You shall not associate with any persons involved in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (11) You shall permit a probation officer to visit you at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- (12) You shall notify the probation officer within seventy-two hours of being arrested or questioned by

a law enforcement officer;

(13) You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the concurrence of the United States Attorney and Chief Probation Officer;

(14) As directed by the probation officer, you shall notify third parties of risks that may be occasioned by the nature of your offense or personal history or characteristics, and shall permit the probation officer to make such notification requirement;

(15) You shall refrain from possessing a firearm, destructive device, or other dangerous weapon;

(16) You shall participate in a program of testing and treatment for drug abuse, as directed by the Probation Officer, until such time as you are released from the program by the Probation Officer.

Special Conditions

(May include, but are not limited to, performance of community service, payment of restitution, participation in mental health treatment and surrender of driver's license)

I understand that if I violate the conditions of supervision, I may be removed from the pretrial diversion program and prosecuted by the United States Attorney.

I assert and certify that I am aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. I also am aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information or in bringing a defendant to trial. I hereby request the United States Attorney for the Middle District of Pennsylvania to defer such prosecution. I agree and consent that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at my request, and I waive any defense to such prosecution on the ground that such delay operated to deny my rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period of this agreement.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

Divertee

Defense Counsel

Assistant U.S. Attorney

Probation Officer

Date

Exhibit F

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

Criminal No. _____

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of Court endorsed hereon the United States Attorney for the Middle District of Pennsylvania hereby dismisses _____ against _____. This dismissal is without prejudice.

United States Attorney

Leave of Court is granted for the filing of the foregoing dismissal.

UNITED STATES DISTRICT JUDGE

Date: _____

Exhibit G

Exhibits H and I are unavailable

(No Charges Filed)

**CERTIFICATION OF COMPLETION OF
PRETRIAL DIVERSION PROGRAM**

Attn: _____

Assistant U.S. Attorney

Re: _____

Dear

I hereby certify that the subject has complied with the conditions and terms set forth in the Pretrial Diversion Agreement.

Sincerely,

U.S. Probation Officer

cc: Defense Counsel

Exhibit J-1

(Charges Filed)

**CERTIFICATION OF COMPLETION OF
PRETRIAL DIVERSION PROGRAM**

Attn: _____

Assistant U.S. Attorney

Re: _____

Dear

I hereby certify that the subject has complied with the conditions and terms set forth in the Pretrial Diversion Agreement.

Please furnish a copy of the Order of Dismissal with Prejudice.

Sincerely,

cc: Defense Counsel

Exhibit J-2

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

V.

Criminal No. _____

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Middle District of Pennsylvania hereby dismisses the _____ against _____ for the reason that the defendant is in the Pretrial Diversion Program. This dismissal is with prejudice.

United States Attorney

Leave of Court is granted for the filing of the foregoing dismissal.

UNITED STATES DISTRICT JUDGE

Exhibit K